

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**JOSUE GUTIERREZ**  
**Plaintiff,**

**v.**

**STATE FARM LLOYDS,**  
**Defendant.**

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**CASE NO. \_\_\_\_\_**

**DEFENDANTS STATE FARM LLOYDS' NOTICE OF REMOVAL**

Defendant State Farm Lloyds, incorrectly sued as State Farm Lloyds, Inc. ("State Farm"), files this Notice of Removal.

**PROCEDURAL BACKGROUND**

1. Plaintiff Josue Gutierrez filed this action on May 19, 2016 against State Farm Lloyds, Inc. in the 103rd Judicial District Court of Cameron County, Texas. That case was docketed under cause number 2016-DCL-03323 (the "State Court Action").
2. State Farm Lloyds was served with process on June 10, 2016.
3. On June 23, 2016, State Farm Lloyds, filed its Original Answer to Plaintiffs' Original Petition in the State Court Action.
4. State Farm timely files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 103rd Judicial District Court of Cameron County, Texas to the United States District Court for the Southern District of Texas, Brownsville Division.

### **NATURE OF THE SUIT**

5. The State Court Action which has been filed by Plaintiff Josue Gutierrez involves a dispute over the alleged non-payment of insurance benefits and the handling of separate insurance claims brought by Plaintiff for damages allegedly caused by “multiple windstorm/hailstorm events including the windstorm of June 2, 2014 in Cameron County.” *See Plaintiff’s Original Petition* at p. 3. Plaintiff has also included a reference to a claim which involves alleged damage to the home’s foundation.

6. Plaintiff asserts causes of action against Defendant including breach of contract, violations of the Texas Deceptive Trade Practices-Consumer Protection Act (“DTPA”), violations of Chapters 541 and 542 of the Texas Insurance Code, and breach of duty of good faith and fair dealing. *Id.* at pp. 4-12.

### **BASIS FOR REMOVAL**

7. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all real parties in interest (Plaintiff and State Farm) and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. At the time the State Court Action was commenced, Plaintiff was and still is a resident and citizen of Texas residing in Cameron County.

9. Defendant State Farm Lloyds was at the time this action was commenced, and still is, a citizen of Illinois. State Farm Lloyds is a "Lloyd’s Plan" organized under chapter 941 of the Texas Insurance Code. It consists of an unincorporated association of underwriters who were at the time this action was commenced, and still are, all citizens and residents of Illinois, thereby making State Farm Lloyds a citizen of Illinois for diversity purposes. *See Royal Ins. Co. of Am.*

*v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members).

10. Plaintiff's Original Petition does not include a statement regarding the amount of damages Plaintiff seeks as required by Texas Rule of Civil Procedure 47(c). However, in his Original Petition, Plaintiff alleges State Farm is liable under three separate insurance claims and seeks actual damages, consequential damages, treble damages under the DTPA, statutory damages under the Insurance Code, mental anguish, pre-judgment and post-judgment interest, attorney's fees, and punitive damages. As shown by Plaintiff's Petition, the amount in controversy requirement is satisfied.

#### **REMOVAL IS PROCEDURALLY CORRECT**

11. This Notice of Removal is timely under 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6 because State Farm was served with process on June 10, 2016 and filed an answer on June 23, 2016.

12. Venue is proper in this Division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

13. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Defendant in the State Court Action are attached herein to the Index of Matters Filed (Exhibit 2).

14. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of Defendant's Original Notice of Removal was promptly given to all parties and to the clerk of the 103rd Judicial District Court of Cameron County, Texas.

15. All documents required by Local Rule 81 to be filed with this Notice of Removal are attached herein to the Index of Matters Filed (Exhibit 2).

**PRAYER**

State Farm Lloyds respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. State Farm also requests any additional relief to which it may be justly entitled.

Respectfully submitted,

/s/ Dan K. Worthington

Dan K. Worthington

TSBN 00785282 / SDOTBN 15353

**ATLAS, HALL & RODRIGUEZ, LLP**

818 Pecan Blvd

McAllen, Texas 78502

956-632-8293 – Phone

956-686-6109 – Fax

[dkw@atlashall.com](mailto:dkw@atlashall.com) - Email

**ATTORNEYS IN CHARGE FOR DEFENDANTS**

**Of Counsel:**

Sofia A. Ramon

TSBN 00784811/SDOTBN 20871

**ATLAS, HALL & RODRIGUEZ, LLP**

818 W. Pecan Blvd. (78501)

P.O. Box 3275

McAllen, Texas 78502

(956) 682-5501 – Phone

(956) 686-6109 – Fax

**CERTIFICATE OF SERVICE**

This will certify that a true and correct copy of this document was served on all counsel of record on the 1<sup>st</sup> day of July, 2016, as indicated below:

Rudy Wattiez

**LAW OFFICE OF RUDY WATTIEZ**

2118 N. Main, Suite 102

San Antonio, Texas 78212

(210) 320-9284 – Phone

(210) 320-9286 – Fax

r\_wattiez@yahoo.com

**Attorneys for Plaintiff**

/s/ Dan K. Worthington

Dan K. Worthington